Alternative Dispute Resolution

Common Ground

Disputes are a fact of life in both national and international commerce. Trying them in U.S. and foreign courts — particularly in countries with evolving legal systems — is risky and potentially expensive. Arbitration, mediation, and other forms of alternative dispute resolution (ADR) can offer a more timely, risk-controlled, and cost-effective alternative to litigation, and when properly employed, ADR can also preserve important business relationships often sacrificed in the litigation process. At Kilpatrick, we know how to effectively structure dispute resolutions mechanisms and contract clauses to avoid disputes and, if necessary, prepare for successful litigation or arbitration proceedings. Our attorneys understand all phases of dispute resolution, having handled a wide variety of cases — including disputes involving governments and government agencies — before all major arbitral institutions and in court proceedings worldwide.

We are extensively experienced in structured negotiation, mediation, arbitration (domestic and international), dispute resolution boards (DRB), and other forms of alternative dispute resolution. A number of our attorneys are certified to act as arbitrators and mediators before the International Chamber of Commerce, the American Arbitration Association, and other domestic and international arbitral institutions, as well as DRB members.

Experience

Massachusetts Department of Transportation ("MassDOT") Central Artery/Tunnel Project: For almost 10 years we represented MassDOT on the $14.6 billion "Big Dig," the largest construction project in North America. We worked with MassDOT, its in-house counsel, experts, and consultants to resolve over $200 million in claims associated with one of the more complex portions of the mainline transportation tunnel – a stretch of tunnel constructed under an existing underground transit station. We dealt with complex claims related to increased utility relocations, differing site conditions, delays, accelerations, and inefficiencies in Disputes Resolution Board (DRB) proceedings, arbitration, mediation, negotiation, and litigation. At the conclusion of our representation, MassDOT wrote to acknowledge our "exceptional work" in handling the litigation:

> *The . . . matter entailed more than a decade of litigation and arbitration proceedings. It was the largest construction contract dispute arising from the Central Artery/Tunnel Project and likely one of the most complex lawsuits in the history of the Commonwealth of Massachusetts. The litigation involved countless trials, hearings, and appeals during which millions of taxpayer dollars were at stake. Your efforts enabled MassDOT to reach an outcome in this matter that ultimately saved the taxpayers millions of dollars.*

Successfully Settled Claims in Multi-Billion Dollar Construction Project: Favorably settled construction dispute for a worldwide supplier of plants, equipment, and services for hydropower stations in the pulp and paper industry against owner-initiated claims arising from construction delays and labor disruptions for a $2

billion pulp mill in South America. Filed for arbitration in the International Court of Commerce in Paris, seeking a declaration of non-liability against potential claims exceeding $300 million and for recovery of the client's contract balance and damages for delays and extra work. Coordinated international co-counsel, laws firms, consulting experts, and witnesses across the globe to enable the resolution of the dispute.

Avoiding Arbitration Through Mediation: Represented an international EPC consortium in connection with the collapse of a reinforced shotcrete/rock dowel supported tunnel on a hydro-electric plant in Panama. All disputes were resolved favorably for our client through mediation just prior to commencement of ICC arbitration hearings.

Resolution Through Structured Negotiation: Represented the design-build-operate-maintain contractor on the $2 billion Tren Urbano mass transit system in San Juan, Puerto Rico – a Federal Transit Administration "demonstration" project, including a substantial ICDR/AAA arbitration. Our representation involved litigation and extensive claim preparation and structured negotiation with the public owner. The Tren Urbano project included several multi-million dollar civil construction contracts which required close integration with the client's systems installation contract. During construction, the client was denied access to various portions of the project due to delays associated with the civil construction contracts. As a result of these delays and interferences, the client prepared and submitted a claim to the owner for $130 million, which included delay, inefficiency, and acceleration costs. Following submission of the claim, the client and the owner entered into an "off the record" structured negotiation process which we led, and which eventually resulted in a successful settlement of the client's claim.

Successful Arbitration of Contract Dispute: Represented one of the world's largest rail transportation OEM's in a AAA arbitration involving termination of a contract for the long-term maintenance of 400 locomotives. Overcame potential contractual hurdles and obtained an arbitration award in favor of our client.

Resolution of Multiparty AAA Arbitration: Represented the U.S. and Israeli owner/developers in a complex, multiparty AAA arbitration involving construction of a luxury condominium project in Las Vegas. A favorable settlement was negotiated toward the end of the arbitration process.

***Nine Figure Settlement at Close of Merits Hearing:** Achieved a nine-figure settlement for a biotech company asserting its patents on a diagnostic test for HIV. The case settled after closing arguments in the CPR arbitration.

**Experience gained by attorney prior to joining Kilpatrick Townsend.*